

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6599 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 & 3 to 5 No.
No.2 Yes.

MADANLAL HIRALAL SAVARIYA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner
RULE SERVED for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 2
SERVED BY RPAD - (R) for Respondent No. 4

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 06/11/98

ORAL JUDGEMENT

This writ petition under Article 226 of the Constitution of India in the nature of habeas corpus petition has been filed challenging the illegal detention of the petitioner for flagrant violation of clause 22 of

Gujarat Essential Commodities etc. Order, 1981 and condition no.8 of the licence given under the said order regarding fixation of price of kerosene.

The brief facts are that the order of detention was passed by the Detaining Authority against the petitioner on 11.4.1998 in exercise of powers under section 3(2) of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

The grounds of detention briefly indicate that a licence to sell kerosene to the ration card holders at subsidised price was granted to the shop owner Hiralal Prajapati. The petitioner was employed as salesman by Hiralal Prajapati. A raid was conducted by supply department to the shop of Hiralal Prajapati. It was found that the petitioner was present in the shop. He was selling kerosene in black market. One bogus customer Vijaybhai Mahijibhai Jadav who did not possess any ration card was sold 10 liters of kerosene at black market price of Rs.7/- per litre against the fixed price of Rs.2.65 per litre. The detention order further speaks that the Detaining Authority was made aware that this activity was being done in collusion between the petitioner and the licence holder Hiralal Prajapati. The detention order was passed against the petitioner as well as the licence holder. The licence holder made representation. The Advisory Board considered the matter and gave report in favour of the shop owner Hiralal Prajapati. Upon report of the Advisory Board the detention of the shop owner was set aside. However, the detention of the petitioner under a separate order was continued. He made representation before the Advisory Board, to the State Government and to the Central Government but remained unsuccessful. He has therefore, filed this writ petition in which the order of detention has been challenged mainly on two grounds. The first ground is that the order of detention of the petitioner is violative of Article 14 of the Constitution of India in as much as on similar offence and on identical facts on the report of the Advisory Board the shop owner Hiralal Prajapati was released and his detention was quashed. The second ground is that the representation made by the petitioner to the Central Government directly sent through his Counsel was not considered and as such the detention of the petitioner is illegal and is required to be set aside.

So far as the second ground is concerned it has no merit at all. The affidavit of Shri P.R.Shukla,

Deputy Secretary to the Government clearly shows that the representation of the detenu petitioner sent to the State Government was dealt with promptly and was ultimately rejected and the detenu was informed of the rejection order vide Government letter dated 19.8.1998. The representation of the detenu was dated 10.8.1998. There was thus no delay on the part of the State Government in deciding the representation. Additional ground taken in the writ petition by virtue of amendment that there was delay on the part of the State Government in deciding the representation of the petitioner has thus no merit.

So far as delay on the part of the Central Government is concerned I again find no substance in this contention. The affidavit of Shri Jatinderbir Singh, Director in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi clearly shows that the first representation of the petitioner dated 16.6.1998 was received. Since it was in Gujarati language, English translation and comments from the State Government were called. It took some time to complete this formality. English version of the representation was called for by telegraphic message dated 25.6.1998. English version was received on 6.7.1998 and parawise comments were received on 9.7.1998. The representation was rejected on 10.7.1998. The detenu was informed through jail authorities of the order passed by the Central Government.

Another representation dated 10.8.1998 was received and this was also rejected by the Central Government on 24.8.1998. The contention of the learned Counsel for the petitioner is that one representation dated 10.8.1998 was sent to the Central Government directly through Advocate of the petitioner and that representation was not decided. However, learned Counsel has been unable to show me that any additional ground was taken in this representation. On the other hand it seems that the grounds in the representation sent to the State Government and directly to the Central Government were identical. A decision of this Court in the case of J.P.Patel Vs.Commissioner of Police in Special Criminal Application No. 1775 of 1993 decided on 7.9.1994 was cited. In this case the first representation was a preliminary representation raising preliminary points. For the first time in the second representation plea of non disturbance of public order was raised. Another representation was made to the Advisory Board by the wife of the detenu. Representation was also made to the Chief Minister of the State of Gujarat through fax message. In this case it was found that other representations were

considered well in time and the representation addressed to the Chief Minister was not attended. It was on these facts that the detenu's detention was held to be illegal. However, the facts before me are altogether different. The representation sent to the State Government was decided so also the representation made to the Advisory Board and to the Central Government. Since it could not be shown to my satisfaction that additional grounds were taken in the representation sent by the learned Advocate for the petitioner to the Central Government directly, hence even if that representation remained unconsidered it will have no effect in as much as the same representation which routed through the State Government was considered and rejected by the Central Government with promptness. Thus, on this ground the order of detention cannot be quashed.

Coming to the first ground it is not disputed that the petitioner was only a servant or salesman of the shop keeper Hiralal Prajapati. The detention order recites at several places that the petitioner was working under the instructions of licence holder Hiralal Prajapati. In para 6 of the grounds of detention there is allegation of collusion between the petitioner and the shop keeper in selling blue kerosene to bogus customers in black market. The order of detention and the grounds of detention of the shop keeper have not been filed in this writ petition. But from the grounds of detention alleged against the petitioner it is clear that the case of the petitioner and the shop keeper was identical. From the side of the State Government an attempt has been made to distinguish that because the shop keeper was performing pooja at the time when raid was conducted, the case of the petitioner stands on different footing. However, even according to the State Government it is clear that the petitioner was only a servant of the shop keeper and he was working under the instructions of the shop keeper. Reference has been made to the counter affidavit filed today and it was argued that on the statement of the shop keeper that he was at pooja and upon the report of the Advisory Board the shop keeper was released from detention. However, there is no material of any kind to indicate that the shop keeper had given instructions to the petitioner not to sell kerosene in black market on any ground and to any customer whatsoever. Likewise there is nothing on record to show that the profit earned by indulging in black marketing activity was pocketed only by the petitioner and the shop keeper did not get any share in such profit. Consequently mere absence of the shop keeper at the time of raid will not be distinguishable feature. The offence against shop

keeper as well as salesman will be the same.

If on identical offence the shop keeper's detention was set aside the detention of the petitioner cannot be sustained. It is clear violation of Article 14 of the Constitution of India. A Division Bench of the Allahabad High Court in Shabban vs. State of Uttar Pradesh Habeas Corpus Writ Petition No.13862 of 1993 decided on 6.10.1993 took a similar view regarding violation of Article 14 of the Constitution of India in matters of preventive detention. In this case the order of detention was passed against the petitioner and three others on the basis of the same incident and similar grounds. The Advisory Board did not recommend the names of three other persons involved in the offence and only recommended the name of the petitioner. It was held that the Advisory Board acted arbitrarily and the order for the release of the petitioner was passed.

The Delhi High Court also took similar view in the case of Suresh Chand Verma Vs. Union of India & Others, Criminal Writ Petition No. 3 of 1993 decided on 24.3.1993. It was a case under COFEPOSA where the order of detention was passed against the petitioner and 2 other persons. The grounds were the same. The order against two persons was revoked on the opinion of the Advisory Board. It was found that the effect of revocation of detention of two persons on the opinion of the Advisory Board would be that the detention of the petitioner also deserves to be set aside.

So far as the factual aspect is concerned, it is clearly averred in ground (g) of the writ petition that the shop owner was released on the opinion of the Advisory Board. This has not been controverted in the two affidavits filed on behalf of the State Government. On the other hand it is admitted now during the course of argument that the shop owner was released and his detention has been quashed on the opinion of the Advisory Board.

Consequently it is a case of clear violation of Article 14 of the Constitution of India inasmuch as one co-accused having identical role was released and his detention was set aside while the detention of the petitioner was maintained. The petition therefore succeeds and is hereby allowed. The order of detention against the petitioner dated 11.4.1998 is hereby quashed. The petitioner shall be released forthwith unless he is wanted in any other criminal case.

Sd/-
(D.C.Srivastava, J)

m.m.bhatt